

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- X

JOHN W. OUGHTRED, Individually And On  
Behalf Of All Others Similarly Situated

Case No. 1:08-CV-3295 (SHS)

Plaintiff,

**NOTICE OF MOTION TO  
DISMISS PURSUANT TO  
RULE 12(b)(6) OF THE FEDERAL  
RULES OF CIVIL PROCEDURE**

v.

E\*TRADE FINANCIAL CORPORATION &  
E\*TRADE SECURITIES LLC,

Defendants.

----- X

PLEASE TAKE NOTICE that upon the Declaration of Joshua S. Sohn, dated June 4, 2010, and all exhibits appended thereto, the accompanying memorandum of law and all other pleadings, submissions, and proceedings in this matter, Defendants E\*TRADE Financial Corporation and E\*TRADE Securities LLC, by their undersigned attorneys DLA Piper LLP (US), will move this Court, before the Honorable Sidney H. Stein, in the United States Courthouse for the Southern District of New York, 500 Pearl Street, New York, New York, on a date and time to be determined by the Court, for an order pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure dismissing the second amended class action complaint *with prejudice*, and for such other and further relief as the Court may deem just and proper.

Dated: New York, New York

June 4, 2010

DLA PIPER LLP (US)

By:

  
Joshua S. Sohn

Rachel A. Gupta

1251 Avenue of the Americas

New York, New York 10020

(212) 335-4500 (Telephone)

(212) 335-4501 (Facsimile)

joshua.sohn@dlapiper.com

rachel.gupta@dlapiper.com

and

Perrie M. Weiner (admitted *pro hac vice*)

Edward D. Totino

Nicolas Morgan (admitted *pro hac vice*)

1999 Avenue of the Stars, Suite 400

Los Angeles, CA 90067-6023

(310) 595-3000 (Telephone)

(310) 595-3300 (Facsimile)

perrie.weiner@dlapiper.com

edward.totino@dlapiper.com

nicolas.morgan@dlapiper.com

*Attorney for Defendants E\*TRADE Financial  
Corporation and E\*TRADE Securities LLC*

TO: Norman E. Siegal  
Rachel E. Schwartz  
STUEVE SIEGEL HANSON LLP  
460 Nichols Road, Suite 200  
Kansas City, MO 64112  
(816) 714-7100 (Telephone)  
(816) 714-7101 (Facsimile)

and

Christopher A. Seeger  
Stephen A. Weiss  
David R. Buchanan  
SEEGER WEISS LLP  
One William Street  
New York, NY 10004  
(212) 584-0700 (Telephone)  
(212) 584-0799 (Facsimile)

*Attorneys for Plaintiffs*